APPENDIX B: MEASURE TO ADJUST PERMIT RENEWAL REQUIREMENTS FOR THE NORTHWESTERN HAWAIIAN ISLANDS BOTTOMFISH LIMITED ACCESS PROGRAM

(This appendix was prepared by the staff of the Western Pacific Regional Fishery Management Council, the NMFS Pacific Islands Fisheries Science Center, and the NMFS Pacific Islands Regional Office.)

SUMMARY

The bottomfish fishery in the federal waters around the Northwestern Hawaiian Islands (NWHI) is managed under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP), which was developed by the Western Pacific Regional Fishery Management Council (Council) and became effective August 27, 1986 (51 FR 27413). Participation in the NWHI bottomfish fishery is controlled through limited access programs in each of two management zones, the Hoomalu Zone to the west of 165° 00' W and the Mau Zone between 165° 00' W and 161° 20' W.

In order to reduce the risk of biological overfishing and to improve the economic health and stability of the bottomfish fishery in the NWHI, FMP Amendment 2 (September 6, 1988; 53 FR 29907) established the Ho'omalu and Mau management zones and established a limited access program in the Ho'omalu Zone. Amendment 5 (May 28, 1999; 64 FR 22810) established a limited access program in the Mau Zone. The programs provide for a limited number of fishing permits to be issued each calendar year. Permits may not be sold, leased, or chartered. Based on the biological, economic, and social characteristics of the bottomfish fisheries in the two zones, the long-term target fleet sizes for the Ho'omalu and Mau Zones have been determined by the Council to be seven vessels and 10 vessels, respectively (in the Mau Zone, two permits are reserved for a Community Development Program that has yet to be established).

In order to help reduce the fleet sizes to the target levels and, once the targets are reached, to possibly allow opportunities for new entry, the two limited access programs include "use-it-or-lose-it" provisions. Permits are renewable only if the permit holder meets requirements that consist of a minimum number of landings in a given year, each with a minimum weight of bottomfish management unit species (BMUS). The annual renewal requirements for the Ho'omalu Zone are three landings of at least 2,500 pounds each and for the Mau Zone, five landings of at least 500 pounds each. The Ho'omalu Zone limited access program allows entry by new participants using a point-based qualification system. Applicants are assigned points according to their level of historical participation and landings of bottomfish. Any available new permits (the target level less the number of renewals) are issued according to the number of points assigned to each applicant, in descending order. Similar provisions for allowing new entry into the Mau Zone have been developed by the Council but the regulatory adjustment has not yet been approved.

Each year the Council undertakes a review of the limited access programs to determine whether adequate attrition has taken place. Depending on the status of the fisheries, the Council considers modifications to the use-it-or-lose-it provisions or other measures needed to reach and maintain the target levels. A review of the Mau Zone program shows that fleet attrition has occurred rapidly. The number of permits issued each year decreased from 25 in 1997, the year in which a two-year moratorium on new entry was put in place, to only nine in 2000, the first full year that the limited access program operated. Six of the nine permitted vessels made their minimum landings and in 2001 the number of permitted vessels consequently dropped to six, all of which were used in 2001 and 2002. In 2003 five permits were issued and used. In the Ho'omalu Zone, the target level of seven permitted vessels was reached in 1997, dropping to six in 1999. Five vessels were active each year in the Ho'omalu zone between 2000 and 2002. Four vessels were active in 2003.

Excess capacity is no longer a problem in either zone and the risk of overfishing in the two zones has been substantially reduced. However, there remain the challenges of allowing adequate opportunities for participation in the two zones (with the objective of maintaining participation at the target levels) and continuing to allocate those opportunities fairly and equitably.

Many participants in the NWHI bottomfish fishery, particularly those fishing in the Mau Zone, participate in multiple fisheries, including pelagic handline and trolling, and shift among fisheries in response to changing conditions. The use-it-or-lose-it provisions and the prohibitions on the lease or charter of permits constrain the flexibility of participants (by design). Now that participation has dropped below the target levels, these constraints can be relaxed, as contemplated in Amendments 2 and 5, affording fishermen more flexibility in their fishing operations and effectively giving them more durability and security in their permits. However, the greater the flexibility that is given to permit holders (e.g., the weaker the use-it-or-lose-it provisions), the greater the preference that is given to existing permit holders relative to prospective participants. The need to increase flexibility therefore has to be balanced against the need to allow adequate opportunities for entry by new participants.

The objective of this measure is to adjust the limited access programs such that participants have a greater degree of flexibility in the use of their fishing permits, while continuing to ensure that permits are allocated in a fair and equitable manner. The measure supports three of the FMP's eight objectives: maintain existing opportunities for rewarding experiences by small-scale commercial, recreational, and subsistence fishermen, including native Pacific islanders; maintain consistent availability of high quality products to consumers, and; maintain a balance between harvest capacity and harvestable fishery stocks to prevent over-capitalization.

This regulatory adjustment has been developed in the context of, and partly in response to, the uncertain regulatory environment associated with the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (NWHI Reserve), established through Executive Order 13178 on December 4, 2000 (65 FR 76903), as modified by Executive Order 13196 on January 18, 2001 (66 FR 7395). The ambiguity of the NWHI Reserve restrictions on fishing and the uncertain outcome of the ongoing process to designate the NWHI Reserve as a National Marine Sanctuary make both

the immediate and long-term future of the NWHI bottomfish fishery unclear. Of particular concern are the uncertain limitations that the NWHI Reserve and/or Sanctuary may put on the number of allowable participants in the fishery and on who is eligible to participate. The NWHI Reserve also closes certain areas to fishing, reducing the available fishing areas. Consequently, the current use-it-or-loose-it management regime would not be changed until issues surrounding the Reserve and sanctuary designation are clarified.

The Council's Bottomfish Plan Team and Advisory Panel developed six alternative measures to provide greater flexibility to permit holders: 1) no action, 2) relax the permit renewal landing requirements so they are spread over two years, 3) extend the permit duration to three years and adjust the landing requirements accordingly, 4) remove the landing requirements and the prohibitions on permit lease and charter, 5) relax the landing requirements so they are spread over two years and remove the prohibitions on permit lease and charter, and 6) make the permit duration indefinite and allow full permit transferability. At its 112th Council meeting (March 18-21, 2002) the Council designed and selected an additional alternative as its preferred alternative: 7) remove the permit renewal landing requirements for all NWHI bottomfish permits retroactive to December 4, 2000. At its 113th meeting (June 24-27, 2002), the Council took final action to recommend this alternative to NMFS for approval and implementation. The measure is considered by the Council to be an interim one until completion of the NWHI National Marine Sanctuary designation process.

The effects of each of the alternative measures would depend on the fishing-related restrictions imposed by the NWHI Reserve (short-term) and National Marine Sanctuary (longer-term). Lacking certainty as to those restrictions, the effects of each of the alternatives are difficult to predict. For example, the preferred alternative would greatly increase the permit allocation preference given to existing permit holders relative to prospective participants, an outcome that could be considered unfair. But if the NWHI Reserve restrictions serve to severely limit the pool of persons eligible to participate in the fishery, the allocation-related effects of the preferred alternative would be small or absent. In the short term, the need to enhance the flexibility associated with permits has been determined by the Council to outweigh the risk of adverse allocation-related effects. In the longer term, once the intent and effects of the NWHI Reserve and/or eventual National Marine Sanctuary are clarified, the Council will be able to consider whether further action is needed to mitigate any such adverse effects.

Another factor that has been taken into consideration is the area closures imposed by the NWHI Reserve. The reduction in available fishing grounds will presumably reduce the fishing efficiency of individual vessels and of the fleet as a whole, so relaxing the landing requirements would be appropriate.

The rate of fleet attrition is expected to be smaller under the preferred alternative than under the no-action alternative. Future fleet-wide rates of effort and catches may therefore be greater than in the no-action scenario, but because the removal of the landing requirements will have the tendency to reduce the incentive to fish, future fleet-wide rates of effort and catch are likely to be smaller than in recent years, regardless of the effects of the NWHI Reserve restrictions.

The Council has determined that the alternative of removing the permit renewal landing requirements is the most preferable one. The requirements will be removed retroactively to the date of establishment of the NWHI Reserve (December 4, 2000). Permits will be renewed automatically, without application and without fee. This measure is considered by the Council to be an interim one until the effects of the NWHI Reserve, and, if established, the National Marine Sanctuary, are clarified. When the process to designate the Sanctuary (estimated to last two to three years) has been completed, the Council will review these issues and consider further adjustments to the limited access programs.

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Abbreviations and Acronyms

BMUS	Bottomfish Management Unit Species
CDP	Community Development Program
CPUE	Catch Per Unit Effort
DEIS	Draft Environmental Impact Statement
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
ESA	Endangered Species Act
FMP	Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region
HDAR	State of Hawaii Division of Aquatic Resources
lb	pound
m	meter
MHI	Main Hawaiian Islands
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MSY	Maximum Sustainable Yield
NEPA	National Environmental Policy Act
nm	nautical mile
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NWHI	Northwestern Hawaiian Islands
RIR	Regulatory Impact Review
RFA	Regulatory Flexibility Act
SPR	Spawning potential ratio

1. INTRODUCTION

1.1 Existing Regulations

The Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP) was developed by the Western Pacific Regional Fishery Management Council (Council) and became effective on August 27, 1986 (51 FR 27413). The FMP prohibits certain destructive fishing techniques, including explosives, poisons, trawl nets and bottom-set gillnets, establishes a moratorium on the commercial harvest of seamount groundfish stocks at the Hancock Seamounts, and implements a permit system for fishing for bottomfish in the Exclusive Economic Zone (EEZ) around the Northwestern Hawaiian Islands (NWHI). The FMP also establishes a management framework that facilitates future adjustments, such as catch limits, size limits, area or seasonal closures, fishing effort limitation, fishing gear restrictions, access limitation, and permit and/or catch reporting requirements.

Amendment 1, implemented on November 11, 1987 (52 FR 38102), extends limited access permits as a management option to bottomfish fisheries in the EEZ surrounding American Samoa and Guam.

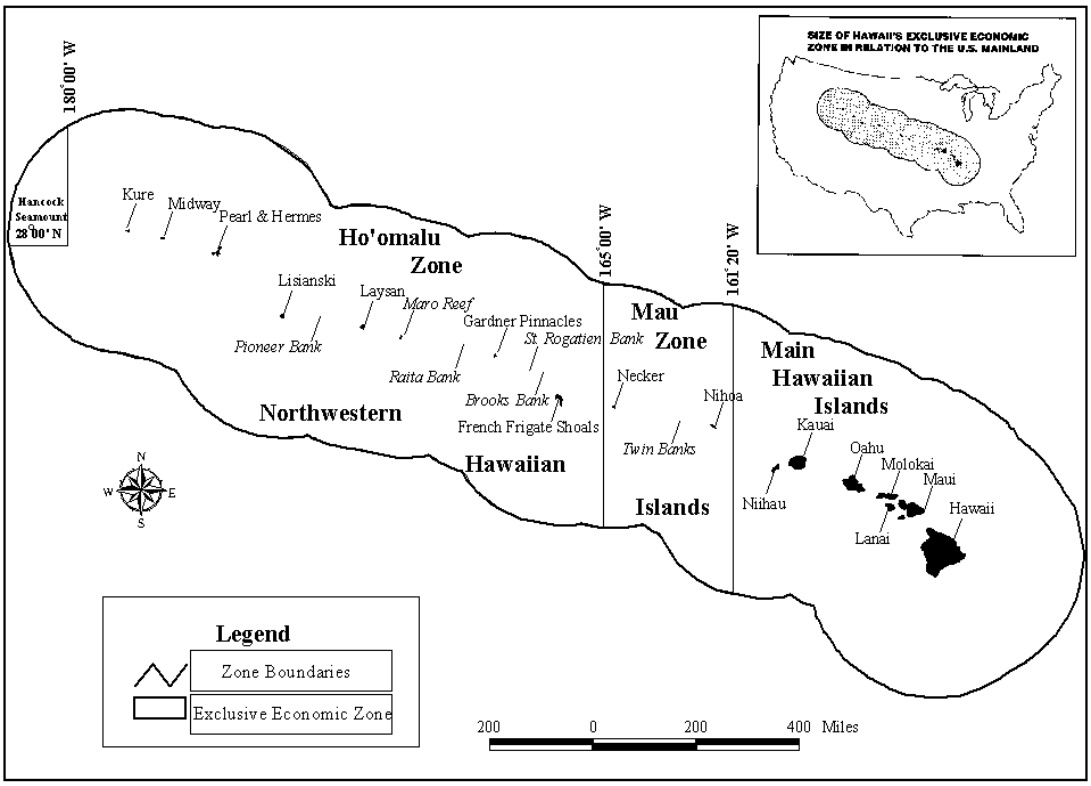
Amendment 2, implemented on September 6, 1988 (53 FR 29907), is intended to diminish the risk of biological overfishing and improve the economic health and stability of the bottomfish fishery in the NWHI. The amendment divides Federal waters in the NWHI into two management areas: the Ho'omalu Zone and the Mau Zone (Figure B-1 shows the location and boundaries of these two zones). It also implemented a limited access system for the Ho'omalu Zone. Although it also established a Mau Zone permit, the number of permit holders was not restricted except that Ho'omalu Zone permit holders could not also hold a Mau Zone permit. The Mau Zone was intended to serve as an area where fishermen could gain experience fishing in the NWHI, thereby enhancing their eligibility for subsequent entry into the Ho'omalu Zone.

Amendment 3, implemented on January 16, 1991 (56 FR 2503), defines recruitment overfishing as a condition in which the ratio of the spawning stock biomass per recruit at the current level of fishing to the spawning stock biomass per recruit that would occur in the absence of fishing is equal to or less than 20 percent. Amendment 3 also establishes a process through which overfishing is monitored and evaluated.

Amendment 4, implemented on May 26, 1991 (56 FR 24351), requires vessel owners or operators to notify the NMFS at least 72 hours before leaving port if they intend to fish in a protected species study zone that extends 50 nautical miles (nm) around the NWHI. This notification allows Federal observers to be placed on board bottomfish vessels to record interactions with protected species if this action is deemed necessary. Amendment 5, implemented on May 28, 1999 (64 FR 22810), establishes a limited access program in the Mau

Zone fishery. A qualifying point system for the initial allocation of permits balances historic participation with current or recent fishing activity. Permit issuance requires that permit holders

Figure B-1. Map of Hawaiian archipelago and Mau and Ho'omalu Zones



be an individual, partnership, or corporation. These permit holders must retain at least 50 percent ownership in the permitted vessel or its replacement. A permit holder whose vessel is unseaworthy or who does not currently own a vessel may lease or charter a vessel for up to 12 months. Permits for the Mau Zone fishery are issued on a calendar-year basis. Participants must meet minimum annual trip and landing requirements in order to qualify for a permit the following year. Permit holders cannot transfer, lease, charter or sell their permits. The Amendment directs the Council to conduct an annual review of the Mau Zone limited access system in order to determine whether adequate attrition has taken place. The Council must also conduct a comprehensive review of the effectiveness of the limited access system five years after implementation. The Council also decided to reserve one-fifth of the target number of permits for the Community Development Program (CDP) when it becomes established. The program had not been established as of the date of submission of this document.

Amendment 6 addressed new requirements under the 1996 Sustainable Fisheries Act (SFA). Portions of the amendment that were immediately approved include designations of essential fish habitat and descriptions of some fishing communities. Those provisions became effective on February 3, 1999 (64 FR 19067). Remaining portions that were approved on August 5, 2003 (68 FR 46112) were provisions regarding Hawaii fishing communities, overfishing definitions, and

bycatch.

In June 1998 the State of Hawaii implemented several management measures for bottomfish in the state waters of the Main Hawaiian Islands (Hawaii Administrative Rule, Chapter 13-94). Because bottomfish are managed under the FMP on an archipelagic-wide basis and because there are bottomfishing grounds in federal waters that are adjacent to state waters, these measures directly impact the stocks managed under the Bottomfish FMP. The new rules apply to seven species of bottomfish and include gear restrictions, bag limits for non-commercial fishermen, closed areas, and a requirement that all bottomfishing vessels be registered with the state.

Amendment 7 was prepared and transmitted to NMFS for approval in parallel with the FMP for Coral Reef Ecosystems of the Western Pacific Region. This amendment prohibits the harvest of Bottomfish and Seamount Groundfish Management Unit Species (BMUS) in the no-take marine protected areas established under the Coral Reef Ecosystems FMP. The Coral Reef Ecosystems establishes such areas around Rose Atoll in American Samoa, Kingman Reef, Jarvis Island, Howland Island, and Baker Island. No-take areas were also proposed for the NWHI, but all measures proposed in the Coral Reef Ecosystems FMP that would have applied to the waters around the NWHI (including Midway) were disapproved because of possible conflict and duplication with the management regime of the NWHI Coral Reef Ecosystem Reserve. Accordingly, NMFS issued a Record of Decision on June 14, 2002 that partially approved the Coral Reef Ecosystems FMP and Amendment 7 to the Bottomfish FMP. A final rule implementing the Coral Reef Ecosystem FMP (including Amendment 7 to the Bottomfish FMP) was published on February 24, 2004 (69 FR 8336).

A number of FMP amendments and framework adjustments are in various stages of preparation and approval. Although they have not been approved by the National Marine Fisheries Service (NMFS) or implemented through regulations, the following descriptions give an indication of the actions being proposed and considered.

Amendment 8 to the FMP would include the federal waters around the Commonwealth of the Northern Mariana Islands and the Pacific Remote Island Areas under the FMP and would designate 49 additional bottomfish species as BMUS.

Amendment 9 to the FMP would prohibit vessels greater than 50' in length overall from targeting Bottomfish Management Unit Species within 50 miles of Guam, and would require these vessels to obtain federal permits and to submit federal logbooks.

A proposed regulatory adjustment to the FMP was developed to establish criteria for allowing new participants into the Mau Zone limited access program (WPRFMC 2002a). The proposed criteria would use a weighted point system based on historical participation in the Main Hawaiian islands (MHI) and NWHI Mau Zone bottomfish fisheries. MHI fishers would be assigned one point for each year during which they landed at least 2,500 pounds (lb) of bottomfish management unit species (BMUS). NWHI fishers would be assigned points based on the number of qualifying years during which they had made at least five trips and landed at least

500 lb of BMUS during each trip. They would be assigned two points for each year up to a maximum of five years, or ten points. One point would be assigned for each additional qualifying year above five years or ten points. The number of available permits equals the long-term target level for participation minus the number of outstanding permits. Any available permits (the target level less the number of renewals) would be issued according to the number of points assigned, in descending order. These criteria would apply to also apply to applicants under the Community Development Program. The Council took final action on this regulatory adjustment at its 111th
meeting (October 23-26, 2001), and it was transmitted to NMFS for review and approval on January 31, 2002. The adjustment has not yet been approved.

As discussed above, of relevance to the management of the NWHI bottomfish fishery is the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (NWHI Reserve), established December 4, 2000 through Executive Order (EO) 13178 (65 FR 76903), as modified by EO 13196 on January 18, 2001 (66 FR 7395). The NWHI Reserve is managed by the Department of Commerce under the National Marine Sanctuaries Act. The EO includes provisions having to do with capping participation and catch in the NWHI bottomfish (and associated pelagics) fishery and closing certain areas to fishing. The intent and effects of the fishing-related provisions, however, are not entirely clear. The EO calls for the Secretary of Commerce to initiate the process to designate the NWHI Reserve as a National Marine Sanctuary. The public scoping associated with that process began in April, 2002.

1.2 Responsible Agencies

The Council was established by the Magnuson Fishery Conservation and Management Act (MSA) to develop management plans for fisheries operating in the U.S. EEZ around American Samoa, Guam, Hawaii, the Northern Mariana Islands and the U.S. possessions in the Pacific.[1] A fishery management plan or amendment is submitted to the Secretary of Commerce for review and approval. If the plan or amendment is approved, NMFS implements it through Federal regulations, which authorizes the conduct of administration, monitoring and enforcement activities. For further information, contact:

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[1] Howland Island, Baker Island, Jarvis Island, Johnston Atoll, Midway Atoll, Kingman Reef, Palmyra Island and Wake Island.

1.3 Public review process and schedule

This regulatory adjustment was developed with the assistance of the Council's Bottomfish Plan Team and Advisory Panel. A draft of this regulatory adjustment was distributed for comments to all holders of federal permits for the Northwestern Hawaiian Islands bottomfish fishery on May 10, 2002. Public meetings and hearings regarding this regulatory adjustment are listed below.

Date	Meeting (Location)/Distribution	Published Notice
October 23-26, 2001	111th Council meeting (Honolulu)	Federal Register Notice October 9, 2001 (51367)
March 12-14, 2002	79th Scientific and Statistical Committee Meeting (Honolulu)	Federal Register Notice February 27, 2002 (8927) Honolulu Advertiser March 10, 2002
March 18-21, 2002	112th Council Meeting (Honolulu)	Federal Register Notice February 27, 2002 (8927) Honolulu Advertiser March 10, 2002
May 14-16, 2002	80th Scientific and Statistical Committee Meeting (Lihue, Kauai)	Federal Register Notice April 29, 2002 (20960)
June 24-27, 2002	113th Council Meeting (Pago Pago, American Samoa	Federal Register Notice June 7, 2002 (39330)

1.4 List of Preparers

This framework regulatory amendment was prepared by (listed alphabetically within agencies):

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2. PURPOSE AND NEED FOR ACTION

In order to reduce the risk of biological overfishing and to improve the economic health and stability of the bottomfish fishery in the NWHI, Amendment 2 (1989) established the Ho'omalu and Mau management zones and established a limited access system in the Ho'omalu Zone. Amendment 5 (1999) established a limited entry system in the Mau Zone. The target fleet sizes for the Ho'omalu and Mau Zones are 7 vessels and 10 vessels, respectively (in the Mau Zone, 2 permits are reserved for a Community Development Program that has yet to be established).

In order to reduce participation to the target levels, as well as to provide opportunities for entry by new participants, established with the limited access programs were "use-it-or-lose-it" provisions that require a specified minimum level of activity in the fishery (based on trips and landings) in order to qualify for annual permit renewal. The renewal requirements for the Ho'omalu Zone are 3 landings of at least 2,500 pounds each and for the Mau Zone, 5 landings of at least 500 pounds each.

The Council undertakes annual reviews of the limited access programs to determine whether adequate attrition has taken place and whether the number of participants has dropped below the target levels. Depending on the status of the fleet, the Councils considers modifications to the use-it-or-lose-it provisions or other measures in order to reach and maintain the target level of participants, and if appropriate, to provide for entry by new participants. A review of the program through 2000 (WPRFMC 2002b) shows that fleet attrition has occurred very rapidly in the Mau Zone. In 2000, the first full year that the limited access program operated, only 9 vessels qualified for and received permits. Six of those vessels met their minimum landing requirements, and in 2001 the number of permitted vessels consequently dropped to 6, all of which were used and 2002. In 2003 five permits were issued and used (Table B-1). In the Ho'omalu Zone, the target level of seven permitted vessels was reached in 1997, dropping to six in 1999 through 2001. Five vessels were active in the Ho'omalu Zone in 2002, and four in 2003.

Table B-1. Issued and active permits in the NWHI bottomfish fishery, 1989-2003

	Mau		Ho'omalu	
Year	**Issued**	**Active**	**Issued**	**Active**
1989	12	5	7	5
1990	21	14	4	* 5
1991	30	14	6	4
1992	30	8	5	5
1993	30	8	5	4
1994	20	12	7	5
1995	23	10	9	5
1996	27	13	8	3
1997	25	9	7	6
1998	14	7	7	7
1999	10	7	6	6
2000	9	6	6	5
2001	6	6	6	5
2002	5	5	5	5
2003	5	5	4	4

Source: Number of issued permits from NMFS Pacific Islands Area Office.
Number of active permits from WPRFMC (2002b) and NMFS Honolulu Laboratory.
* One vessel without a bottomfish permit recorded landing of *uku* from the NWHI from trolling.

Since participation in both zones has dropped to, and below, the target levels, excess capacity is no longer a problem in either zone and the risk of overfishing has been substantially reduced. The problem now is that the fleet sizes in the two zones have dropped below the target levels, due at least in part to the strictness of the permit renewal requirements.

As contemplated in Amendments 2 and 5, adjustments in the limited access programs can now be made to help achieve and maintain the long-term target participation levels and to provide for entry by new participants. As a partial solution, provisions for allowing new entry into the Mau Zone (again, based on past bottomfish landings) were developed in the form of a regulatory adjustment, currently under review by NMFS (provisions for new entry in the Ho'omalu Zone were established along with the limited entry program in Amendment 2).

Many participants in the NWHI bottomfish fishery, particularly those fishing in the Mau Zone, participate in other fisheries. Being able to participate in multiple fisheries and to shift among fisheries in response to changing economic conditions are important factors in the economic viability of these fishing operations and of the industry as a whole. The existing permit systems

in the two zones, with their relatively strict use-it-or-lose-it provisions, constrain the flexibility of participants (by design). Now that participation has dropped to, and below, the target levels, these constraints can be relaxed, affording fishermen more flexibility in their fishing operations and effectively giving them more durability and security in their permits. Such an increase in flexibility would not directly lead to greater participation (because if a permit holder does not qualify for a renewal, the permit could be filled by either a new applicant or the existing permit holder, applying as a "new" applicant[2]). However, the enhanced flexibility, security, and durability associated with the permits should improve the economic performance of individual vessels and of the fleet, making permits more valuable and making the pool of prospective applicants larger, thereby indirectly encouraging greater participation and helping to achieve and maintain the long-term target participation levels in both NWHI zones.

The greater the flexibility that is given to permit holders (e.g., the weaker the use-it-or-lose-it requirements), the greater the preference that is given to existing permit holders and the less likely that new participants will be able to enter the fishery in any given year. The need to increase flexibility therefore has to be balanced against the need to allow adequate opportunities for new entry.

Confounding the issue of fleet attrition are the effects of the NWHI Reserve. The language of EO 13178, as modified by EO 13196, is ambiguous with respect to restrictions on fishing in the Reserve.

Regarding the number of allowable participants, the EO states that there will be no increase in the number of bottomfishing permits beyond the number in effect the year preceding December 4, 2000. It specifies a cap on the "annual level of aggregate take" in bottomfishing, which appears to be set at the sum of "annual aggregate levels" of take for each bottomfish permit holder, equal to the permit holder's average take over the five years preceding December 4, 2000, as determined by the Secretary. The Secretary "may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits."

Regarding eligibility to participate, the EO states that "all currently existing commercial Federal fishing permits and current levels of fishing effort and take ... shall be capped as follows ...," where "the annual aggregate level [of take] for each permitted bottomfisher shall be that permittee's individual average take over the 5 years preceding December 4, 2000, as determined by the Secretary....". For non-bottomfish commercial fishing a permit holder's "annual aggregate level" of take is set at his/her take in the year preceding December 4, 2000. "Trolling for pelagic species will be capped based on reported landings for the year preceding December 4, 2000."

Regarding closed fishing areas, the EO prohibits commercial and recreational fishing in certain

[2] This assumes that the regulatory adjustment to provide for new entry into the Mau Zone will be approved. Until then, a Mau Zone permit holder that does not meet the renewal requirement would not be able to re-enter the fishery (unless the landing requirement is waived pursuant to 50 CFR § 660.61 (e)(2) or (j)(2)) and no new participants would be allowed to enter the Mau Zone fishery.

parts of certain areas of the Reserve called Reserve Preservation Areas.

3. MANAGEMENT OBJECTIVE

The objective of this measure is to adjust the Mau Zone and Ho'omalu Zone limited access programs such that participants have a greater degree of flexibility in the use of their permits, while continuing to ensure that permits are allocated in a fair and equitable manner.

The measure is being proposed in the context of, and partly in response to, the uncertain regulatory environment associated with the NWHI Reserve. The ambiguity of the NWHI Reserve restrictions on fishing and the uncertain outcome of the ongoing process to designate the NWHI Reserve as a National Marine Sanctuary make both the immediate and long-term future of the NWHI bottomfish fishery unclear. This measure is considered by the Council to be an interim one until the effects of the NWHI Reserve, and, if established, the National Marine Sanctuary, are clarified.

The measure is needed to help achieve three of the FMP's eight objectives:

> Objective 5: *Maintain existing opportunities for rewarding experiences by small-scale commercial, recreational, and subsistence fishermen, including native Pacific islanders.*
>
> Several factors are having the effect of limiting opportunities to participate in the NWHI commercial bottomfish fishery, including constraints imposed on participants by the use-it-or-lose-it and other provisions of the limited access programs and, possibly, the participation-related restrictions of the NWHI Reserve. The proposed action would have the aim of mitigating these opportunity-limited effects.
>
> Objective 6: *Maintain consistent availability of high quality products to consumers*.
>
> The amount and consistency of supply of high quality bottomfish products is related to the amount of fishing effort and participation in the NWHI fishery. The proposed action would have the aim of slowing or reversing the decline in participation in the NWHI fishery and thus slowing or reversing any decline in the amount and consistency of supply of bottomfish products.
>
> Objective 7: *Maintain a balance between harvest capacity and harvestable fishery stocks to prevent over-capitalization.*
>
> The target participation levels established in Amendments 2 and 5 for the Ho'omalu and

Mau Zones, respectively, were formulated to achieve maximum sustainable yield while preventing over-capitalization and reducing the risk of overfishing. The proposed action would be aimed at helping keep participation from falling excessively below the target levels without imposing any risk of participation exceeding the target levels.

4.MANAGEMENT ALTERNATIVES

Greater flexibility in the use of fishing permits could be achieved using several different approaches, including: 1) relaxing the permit renewal landing requirements, 2) lengthening the duration of a permit, and 3) relaxing the restrictions on permit transferability.

The Council's Bottomfish Plan Team and Advisory Panel developed six alternative measures that use one or a combination of the above approaches. At the 112th Council meeting (March 18-21, 2002), after hearing public comments on the proposed action at its 111th and 112th meetings, the Council selected an additional variation of those alternatives (a seventh alternative) as its final preferred alternative. Each of the seven alternatives is described below.

Under all of these alternatives, the existing target participation levels would remain intact and continue to provide a cap on participation in the two zones.

Alternative 1: No action

Participants in the NWHI limited access programs would continue to be required to meet the existing renewal requirements in order to renew their permits on an annual basis, and their permits would continue to be subject to the prohibitions on the sale, lease, and charter of permits.

Alternative 2: Relax landing requirements so they are spread over two years

The renewal landings requirements would be relaxed so that landings during the previous two years are counted rather than just those during the previous one year. The permit would continue to be valid for only one year at a time.

Alternative 3: Increase permit duration to three years

The permit duration would be extended from one year to three years. Three times as many qualifying landings would have to be made during the three-year life of the permit (so the average annual requirements would be unchanged).

Alternative 4: Remove landing requirements and remove prohibitions on permit lease and

charter

The annual landings requirements for permit renewal would be removed and the lease and charter of permits would be allowed. Such temporary transfer of permits would be subject only to the existing vessel size restrictions, the prohibition on a given vessel being registered for use with both a Ho'omalu and a Mau Zone permits, and other applicable law. Persons would not have to meet the new-permit eligibility requirements in order to become the lessee or charteree of a permit. The sale of permits would remain prohibited.

Alternative 5: Relax landing requirements so they are spread over two years and remove prohibitions on permit lease and charter

The renewal landings requirements would be relaxed so that landings during the previous two years are counted rather than just those during the previous one year (as in Alternative 2), and permits would be allowed to be leased and chartered. Such temporary transfer of permits would be subject only to the existing vessel size restrictions, the prohibition on a given vessel being registered for use with both a Ho'omalu and a Mau Zone permits, and other applicable law. Persons would not have to meet the new-permit eligibility requirements in order to become the lessee or charteree of a permit. The sale of permits would remain prohibited. If a permit is leased or chartered, the two parties to that agreement would decide who is to receive credit for the landings – this is, the permit holder could use them towards the renewal requirements or the lessee could use them to earn points towards qualification for a new permit.

Alternative 6: Make permits freely transferable and of indefinite duration

The permit systems would be modified by making permits valid indefinitely and transferable through sale, lease, or charter (subject only to the existing vessel size restrictions, the prohibition on a given vessel being registered for use with both Ho'omalu and Mau Zone permits, and other applicable law). There would be no permit renewal requirements or new-entry requirements.

Alternative 7: Remove permit renewal landing requirements (preferred alternative)

The annual landings requirements for permit renewal would be removed, retroactive to December 4, 2000, the date the NWHI Reserve was established and restrictions on fishing in the NWHI became uncertain (so no landings would be required in 2000 for renewal in 2001 etc.). The existing prohibitions on permit sale, lease, and charter would remain in effect. Permits would be renewed automatically without application and without fee. The measure would be considered by the Council to be an interim one until the effects of the NWHI Reserve, and, if established, the National Marine Sanctuary, are clarified. When the process to designate the Sanctuary (estimated to last about three years) has been completed, the Council would review these issues and consider further adjustments to the limited access programs. For the purpose of the analyses done here, the measure is considered to be of indefinite duration.

5. CONSISTENCY WITH NATIONAL STANDARDS FOR FISHERY CONSERVATION AND

MANAGEMENT

Section 301 of the MSA establishes ten national standards for fishery conservation and management. FMPs and their associated regulations must be consistent with the National Standards. The degree of consistency of the proposed management measure (Alternative 7) is discussed below.

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

The proposed measure will not change the fleet size targets in the two management zones and will not allow the number of permit holders to exceed the target levels. The measure is likely to result in lower – if any change at all – levels of per-permit fishing effort and catches than under the no-action scenario. Although it could possibly result in greater levels of fleet-wide catches relative to the no-action scenario, future fleet-wide catches are still likely to decrease over time relative to recent levels, and those levels in the NWHI have been well below MSY (and the associated stock biomass size has been on the conservative side of the yield function). The proposed measure is therefore consistent with the need to prevent overfishing. Given that the NWHI Reserve appears to reduce the size of available fishing areas, if the measure results in lower levels of fleet-wide catches than under the no-action scenario, it will also serve to reduce the degree of localized fish depletion in the areas left open to fishing (Section 6.1.4.2). The proposed measure will have no effect on the achievement of optimum yield.

(2) Conservation and management measures shall be based upon the best scientific information available.

The proposed measure was developed using the best available information. The data on the numbers of permit holders and active vessels and on fish landings are highly reliable. The available information regarding the intent and effects of the NWHI Reserve restrictions is of poor quality (the language of the EO is ambiguous and no subsequent action has been taken to clarify it) but the Council will continue to seek better information. The proposed measure was formulated in part to cope with the uncertainty associated with the NWHI Reserve restrictions and to provide at least an interim solution until the quality of information regarding the effects of the NWHI Reserve improves.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The proposed measure will directly affect fishing only in the federal waters around the NWHI. The bottomfish being fished in those waters have been determined to be part of a stock complex that ranges through the entire Hawaiian archipelago. The likely effects on the stock as a whole have been taken into account. The proposed measure will effectively allow greater levels of

participation than under the no-action alternative (within any constraints imposed by the NWHI Reserve). It might, therefore, result in lower levels of fishing effort in the MHI – where fishing pressure is greater than in the NWHI – and thereby reduce the degree of localized fish depletion in MHI waters relative to the no-action scenario.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed management measure will not discriminate between residents of different states.

In terms of part (A), the existing limited access programs do allocate fishing privileges among existing and prospective participants. Allocations are made according to the new-entry criteria and the renewal requirements, which were formulated to be fair and equitable and to give preference to historical participants. The proposed measure will greatly strengthen the preference given to existing permit holders relative to prospective permit holders. If the NWHI Reserve restrictions serve to severely limit the pool of eligible participants, the mechanisms contained in the limited access programs for ensuring the fair allocation of fishing privileges would become virtually meaningless, as all available fishing privileges would have become allocated (not by the FMP but by the authority of the NWHI Reserve) to that group of persons, at the expense of all others. In that case, because the pool of eligible participants would be so severely limited, any adverse allocation-related effect of the proposed measure would be small or nil (Section 6.1.4.1).

In terms of part (B), the proposed measure, which modifies the way fishing privileges are allocated, is likely to result in greater – if any change at all – levels of per-permit fishing effort and catches than under the no-action scenario. Although it could possibly result in greater fleet-wide catches relative to the no-action scenario, future fleet-wide catches are likely to decrease over time relative to catches in recent years, which in the NWHI have been well below MSY (and associated stock biomass sizes have been on the conservative side of the yield function). The measure is therefore consistent with the need to conserve fish stocks (Section 6.1.4.2).

In terms of part (C), the proposed measure will effectively freeze the distribution of permits as it was in 2000 (because there would be little reason for permit holders to voluntarily give up their permits) and thus stem any tendency for permits to become concentrated in yet fewer hands. On the other hand it could be argued that since permits could be held by the existing permit holders for such long periods, the shares of privileges held by those permit holders would be excessive. If the NWHI Reserve restrictions serve to severely limit the pool of eligible participants, any such adverse allocation-related effect of the proposed measure would be small or nil (Section 6.1.4.1).

(5) Conservation and management measures shall, where practicable, consider efficiency in

the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

The proposed measure will enhance the flexibility associated with permits, thereby increasing the operational flexibility of individual vessels and encouraging improved economic efficiency for individual vessels and the NWHI bottomfish fishery as a whole (Section 6.1.4.1).

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

The annual reviews of the Mau Zone and Ho'omalu Zone limited access programs allow the Council to address variation and contingent factors. The proposed measure has been formulated in the context of the latest annual review and the uncertain regulatory environment associated with the NWHI Reserve.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The proposed measure will remove the permit renewal landing requirements and thereby reduce the administrative costs of processing permit renewals, but those savings will be offset by the loss of permit application fee revenues. The proposed measure will not duplicate existing measures or regulations (Section 6.1.4.10).

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The target levels of ten and seven vessels in the Mau and Ho'omalu Zones, respectively, take into account the importance of the NWHI bottomfish fishery to communities in Hawaii by allowing sufficient participation while preventing overfishing. The proposed measure will serve to facilitate participation within the constraints of the target levels and any constraints imposed by the NWHI Reserve (Section 6.1.4.1).

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

The proposed measure is not likely to have any effect on the percentage rate or disposition of bycatch. It might lead to a reduction in fleet-wide catches, in which case the absolute amount of bycatch would also be reduced (Section 6.1.4.1).

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

Because the proposed action would remove annual permit renewal landing requirements, it would remove the incentive for participants to take trips during adverse weather conditions to make their landing requirements. This would promote the safety of human life at sea.

6. RELATIONSHIP TO OTHER APPLICABLE LAWS AND PROVISIONS OF THE MAGNUSON-STEVENS ACT

6.1 National Environmental Policy Act (NEPA)

6.1.1 Purpose and Need for Action

The purpose and need for this action are described in Section 2 of this appendix (pg. B-13).

6.1.2 Alternatives

The alternative management measures considered by the Council for this action are described in Section 4 of this appendix (pg. B-17).

6.1.3 Affected Environment Given Cumulative Impacts

See Chapter 3 of the FEIS for a detailed description of the affected environment given cumulative impacts, as well as a description of the bottomfish fishery and fishing sectors.

6.1.4 Environmental Impacts of Alternatives

6.1.4.1 Impacts on the fishery

The types of impacts most likely to occur as a result of the action are those directly related to the objective of this action – to adjust the limited access programs such that participants have a greater degree of flexibility in the use of their permits, while continuing to ensure that permits are allocated in a fair and equitable manner. The first part of the objective – increasing permit flexibility – is aimed at giving individual operations more flexibility so that they, and the fleet as a whole, can operate more efficiently. Increased efficiency would also have the effect of encouraging participation in the fishery. This part of the objective is essentially aimed at reducing the cost to fishermen of preserving the option to fish in the future (e.g., the cost of having to fish at a particular time in spite of poor returns in order to preserve the possibility of fishing for positive returns in the future). The second part of the objective has to with ensuring equity in the allocation of fishing privileges. The analysis in this section focuses on these two types of effects so that the relative advantages of the alternatives can be assessed in terms of the action objective.

The effects of each of the alternative measures would depend on the fishing-related restrictions imposed by the NWHI Reserve (short-term) and National Marine Sanctuary (longer-term). Lacking certainty as to those restrictions, the effects of each of the alternatives are difficult to predict. For example, the preferred alternative would greatly increase the permit allocation preference given to existing permit holders relative to prospective participants, an outcome that could be considered unfair. But if the NWHI Reserve restrictions serve to severely limit the pool of persons eligible to participate in the fishery, the allocation-related effects of the preferred alternative would be small or absent.

The effects of each of the alternatives would also depend on if and when the regulatory adjustment to provide for new entry into the Mau Zone is approved. Until it is approved, a Mau Zone permit holder that fails to meet the renewal requirements would not be allowed to re-enter the fishery (unless the landing requirement is waived pursuant to 50 CFR § 660.61 (e)(2) or (j)(2)).

Given the uncertainty associated with the NWHI Reserve, the likely effects of each of the alternatives are first discussed in isolation of the NWHI Reserve restrictions (as if they had no effect on the fishery), addressing the objectives of "permit flexibility" and "fairness of allocations" separately. The possible implications of the NWHI Reserve in terms of those effects are then addressed under the heading "relationship to NWHI Reserve."

After assessing the likely impacts in terms of the action objective, a final type of possible fishery effect is assessed, that of changes in annual catches of the NWHI bottomfish fleet.

Alternative 1: No action

Permit flexibility: As described in Section 5, the existing limits on permit flexibility are constraining the operational flexibility of fishery participants and contributing to excessive fleet attrition.

Fairness of allocations: The allocation mechanisms in the limited access programs give substantial preference to historical participants but allow opportunities for entry by new participants (in the case of the Mau Zone, the provisions for new entry are pending approval).

Relationship to NWHI Reserve: If the NWHI Reserve serves to severely limit the pool of eligible participants (e.g., to the group of persons that took fish during the 5 years preceding December 4, 2000 or those holding permits on December 4, 2000), then the allocation-related provisions of the FMP would become meaningless, as the available fishing privileges would have been already allocated by the provisions of the NWHI Reserve.

Alternative 2: Relax landing requirements so they are spread over two years

Permit flexibility: This alternative would give a slightly greater degree of flexibility to permit holders by giving them twice the amount of time to fulfill the same landings requirements that

are required each year under the no-action alternative. There would be enough flexibility for permit holders to choose not to participate for a full year without losing their permits.

Fairness of allocations: This alternative would give a slightly stronger preference to existing permit holders relative to new applicants.

Relationship to NWHI Reserve: The likely effects in terms of permit flexibility would not depend on the NWHI Reserve restrictions. If the NWHI Reserve serves to severely limit the pool of eligible participants, then the allocation-related effects of this alternative would be small or none, as the available fishing privileges would have been already allocated by the provisions of the NWHI Reserve.

Alternative 3: Increase permit duration to three years

Permit flexibility: Lengthening the permit duration to three years would give permit holders slightly greater flexibility – the renewal requirements would be the same on average, but being spread out over three years they would allow greater flexibility in fishing operations from year to year.

Fairness of allocations: This alternative would give a slightly stronger advantage to existing permit holders relative to new applicants.

Relationship to NWHI Reserve: The likely effects in terms of permit flexibility would not depend on the NWHI Reserve restrictions. If the NWHI Reserve serves to severely limit the pool of eligible participants, then the allocation-related effects of this alternative would be small or none, as the available fishing privileges would have been already allocated by the provisions of the NWHI Reserve.

Alternative 4: Remove landing requirements and remove prohibitions on permit lease and charter

Permit flexibility: This alternative would give a much greater degree of flexibility and security to permit holders. They could lease or charter their permits to anyone within a large pool of eligible persons, and once a permit is held, the only ways to involuntarily lose it would be through death of the holder or through losing the vessel to which the permit is assigned (unless the permit is registered to a new vessel according the existing size and time restrictions).

Fairness of allocations: Removing the renewal landings requirements would give a much stronger preference to existing permit holders relative to new applicants, making it much more difficult for new applicants to become permit holders. On the other hand, the allowance of permit lease and charter would provide opportunities for participation by fishermen that do not actually hold permits, subject only to the vessel size restrictions. Because the security – or degree of ownership – associated with a permit would increase as a result of the action, the value of a permit is likely to increase. This enhanced value would be effectively assigned to the existing

permit holders.

Relationship to NWHI Reserve: The ability to lease and charter permits would be constrained by any limits on eligibility imposed by the NWHI Reserve. Under the most restrictive possible scenario (if the pool of permit holders is the same as the pool of eligible participants) there would be zero ability to lease or charter permits. Such limits on the pool of eligible participants would also reduce any allocation-related effects of the measure, making them zero under the most restrictive scenario. Any constraints imposed by the NWHI Reserve on the ability to lease and charter permits would constrain the increase in value of a fishing permit, making the increase effectively zero under the most restrictive scenario.

Alternative 5: Relax landing requirements so they are spread over two years and remove prohibitions on permit lease and charter

Permit flexibility: This alternative would give a moderately greater degree of flexibility and security to permit holders, but less than Alternative 4. Permit holders would have more time to fulfill the landing requirements and they could lease or charter their permits to anyone within a large pool of eligible persons.

Fairness of allocations: This alternative would give a moderately stronger preference to existing permit holders relative to new applicants, making it more difficult for new applicants to become permit holders. On the other hand, the allowance of permit lease and charter would provide opportunities for participation by other persons. Because the security – or degree of ownership – associated with a permit would increase as a result of the action, the value of a permit is likely to increase. This enhanced value would be effectively assigned to the existing permit holders. These allocation-related effects would be less severe than under Alternatives 4 and 6.

Relationship to NWHI Reserve: The ability to lease and charter permits would be constrained by any limits on eligibility imposed by the NWHI Reserve. Under the most restrictive possible scenario there would be zero ability to lease or charter permits. Such limits on the pool of eligible participants would also reduce any allocation-related effects of the measure, making them zero under the most restrictive scenario. Any constraints imposed by the NWHI Reserve on the ability to lease and charter permits would constrain the increase in value of a fishing permit, making the increase effectively zero under the most restrictive scenario.

Alternative 6: Make permits freely transferable and of indefinite duration

Permit flexibility: This alternative would give a very high degree of flexibility to permit holders – higher than under any of the other alternatives. Once a permit is held, the holder would be free to use it or not use it, or transfer it at any time temporarily or permanently to anyone within a large pool of eligible persons, with the amount of compensation determined by the market.

Fairness of allocations: Initially, this alternative would give a much stronger preference to existing permit holders relative to new applicants. But since virtually anybody would be able to

purchase, lease, or charter a permit, in the long term the system would be very fair in the most general sense. However, an important criterion of "fairness" in the existing system is historical participation in the Hawaii bottomfish fishery. This criterion would be largely abandoned under this alternative. Although historical participants would be strongly favored in the initial issuance of permits, market forces would ultimately become the driving factors in allocating permits and fishing privileges. Because the security – or degree of ownership – associated with a permit would increase as a result of the action, the value of a permit is likely to increase. This enhanced value would be effectively assigned to the existing permit holders. Persons that have participated in Hawaii's bottomfish fishery but that do not currently hold permits – such as those that have been working towards becoming eligible for a Mau or Ho'omalu Zone permit – would be adversely impacted by this alternative in that they would lose the advantage they had had relative to other prospective participants with no history in the fishery.

Relationship to NWHI Reserve: The ability to sell, lease, and charter permits would be constrained by any limits on eligibility imposed by the NWHI Reserve. Under the most restrictive possible scenario there would be zero ability to sell, lease, or charter permits. Such limits on the pool of eligible participants would also reduce any allocation-related effects of the measure, making them zero under the most restrictive scenario. Any constraints imposed by the NWHI Reserve on the ability to transfer permits would constrain the increase in value of a fishing permit, making the increase effectively zero under the most restrictive scenario.

Alternative 7: Remove permit renewal landing requirements (preferred alternative)

Permit flexibility: This alternative would give a moderately greater degree of flexibility and security to permit holders. Once a permit is held, the only ways to involuntarily lose it would be through death of the holder or through losing the vessel to which the permit is assigned (unless the permit is registered to a new vessel according the existing size and time restrictions).

Fairness of allocations: Removing the renewal landing requirements would give a much stronger preference to existing permit holders relative to new applicants, making it much more difficult for new applicants to become permit holders.

Relationship to NWHI Reserve: The likely effects in terms of permit flexibility would not depend on the NWHI Reserve restrictions. If the NWHI Reserve serves to severely limit the pool of eligible participants, then the allocation-related effects of this alternative would be small or none, as the available fishing privileges would have been already allocated by the provisions of the NWHI Reserve.

In Table B-2 is a summary of the management alternatives and their likely effects (relative to the no-action scenario) in terms of the objective of this action. Again, the effects of the alternatives are described under two sets of assumptions: first, that the NWHI Reserve restrictions would have no effect on participation in the fishery, and second, that they would a severe restrictive effect. For the purposes of illustration in Table B-2 it is assumed (in columns b and d) that the NWHI Reserve restrictions would limit the pool of eligible participants such that the pool of

permit holders is the same as the pool of eligible participants.

It should be emphasized that the “fairness of allocations” effects indicated in columns (c) and (d) do not indicate beneficial versus adverse effects. They indicate the direction and degree of shift in preference given to one group over another. Whether or not such a shift is fair would depend on the criteria used to judge fairness. To date, the Council has sought a balance between giving some degree of preference to historical participants and providing opportunities to new participants.

Table B-2. Management alternatives and their likely effects in terms of the action objective, relative to the no-action scenario

Alternative	Permit flexibility (expressed as relative increases in permit flexibility)		Fairness of allocations	
	(a) Assuming NWHI Reserve has no effect	(b) Assuming NWHI Reserve has extreme restrictive effect	(c) Assuming NWHI Reserve has no effect	(d) Assuming NWHI Reserve has extreme restrictive effect
1) No action	0	0	0	0
2) Relax landing requirements so they are spread over two years	+	+	**Slightly** stronger preference to permit holders relative to new applicants	0
3) Increase permit duration to three years	+	+	**Slightly** stronger preference to permit holders relative to new applicants	0
4) Remove landing requirements and remove prohibitions on permit lease and charter	+ + +	+ +	**Much** stronger preference to permit holders relative to new applicants, but fishing opportunities for others provided through market for permits	0
5) Relax landing requirements so they are spread over two years and remove prohibitions on permit lease and charter	+ +	+	**Moderately** stronger preference to permit holders relative to new applicants, but fishing opportunities for others provided through market for permits	0
6) Make permits freely transferable and of indefinite duration	+ + + +	+ +	**Much** stronger **initial** preference to existing permit holders relative to new applicants, but fishing opportunities for others provided through market for permits	0
7) Remove landing requirements (preferred alternative)	+ +	+ +	**Much** stronger preference to permit holders relative to new applicants	0

As indicated in Table B-2, the effects in terms of permit flexibility would depend on the effects of the NWHI Reserve only for those alternatives that would allow some degree of permit transferability (Alternatives 4-6). The effects in terms of fairness of allocations would depend on the effects of the NWHI under every alternative. In fact, the effect would be nil under every alternative if the Reserve serves to severely limit the pool of eligible participants.

The impacts described in the preceding paragraphs and summarized in Table B-2 describe generalized, indefinite-term effects caused by modifications to the permit systems. In addition, there may be some short-term transitional effects, particularly under Alternatives 4-6. By allowing participation by any person – not just those with historical participation – these alternatives would bring adverse impacts to prospective participants that have been earning their way into the fishery by making qualifying landings – they would lose their earned advantage over other prospective participants (this impact would be nil if the NWHI Reserve serves to severely restrict the pool of eligible participants).

Another possible effect of the alternatives, not indicated in Table B-2, is a change in individual and fleet-wide fishing effort and catches relative to the no-action scenario. The alternatives that relax the landing requirements (Alternatives 2-7) would reduce the incentive of a given permit holder to fish, thereby having the likely effect of reducing individual fishing effort and catches. However, the rate of fleet attrition is expected to occur more rapidly under the no-action alternative than under any of the action alternatives, so any tendency for Alternatives 2-7 to dampen individual fishing effort (and catch, since the fleet-wide catch rate in the NWHI is likely to be less than MSY, with fishing effort and stock biomass on the conservative side of their respective yield functions) would, on the fleet-wide scale, be offset by the slower fleet attrition rate under those alternatives. In other words, relaxing the landing requirements is likely to result in a reduction in future fleet-wide effort and catch rates relative to recent levels, but relative to the no-action scenario (the baseline against which the impacts of the alternatives should be assessed), the impact could be either positive or negative because the fleet size may be larger in the future than under the no-action alternative.

In contrast to the individual effort- and catch-reducing effects of the relaxation in landing requirements, the alternatives that allow some degree of permit transferability (Alternatives 4-6) would encourage the transfer of permits to those fishermen most interested in fishing at any given time, thereby having the tendency to result in greater levels of per-permit and fleet-wide fishing effort and catches relative to the no-action scenario.

Which of the two contrary effects is likely to prevail under each of the action alternatives – greater or lesser fleet-wide effort and catch than in the no-action scenario – is difficult to predict, but in any case the effect is likely to be relatively small. If the NWHI Reserve restrictions serve to cap the fleet-wide catch, any tendency for fleet-wide catches to increase would be constrained within the bounds of the cap. If the NWHI Reserve restrictions serve to severely limit the pool of eligible participants, the effort- and catch-increasing effect under Alternatives 4-6 would be small or nil.

Another factor to be considered is the area closures imposed by the NWHI Reserve. The reduction in available fishing grounds will presumably reduce the fishing efficiency of individual vessels and of the fleet as a whole. Relaxing the landing requirements (thereby reducing the need, or incentive, to fish) in accord with that reduction would therefore be appropriate. Such a relaxation could also serve to reduce the risk of localized fish depletion in the areas left open to fishing, but only in the case that a relaxation of the landing requirements results in greater fleet-wide catches relative to the no-action scenario, which, as described above, is not certain.

6.1.4.2 Impacts on target and non-target fish stocks

As described in Section 6.1.4.1, Alternatives 2, 3, and 7 could lead to lower levels of per-permit fishing effort and catch and Alternatives 4-6 could lead to either greater or lower levels of per-permit fishing effort and catch than under the no-action alternative. Any of the action alternatives could result in either greater or lower levels of fleet-wide effort and catch than in the no-action scenario, within the constraints imposed by the NWHI Reserve restrictions. Alternatives 4-6 would have a greater likelihood of resulting in increasing future levels of catch than Alternatives 2, 3, and 7.

Given that any such effect on fleet-wide catches is likely to be relatively small and that catch rates under the no-action scenario are likely to be well under MSY in the foreseeable future (landings in 2000 and 2001 from the NWHI were about 45-50% of MSY, and the associated stock biomass sizes were on the conservative side of the yield function), even in the case of a fleet-wide effort- and catch-increasing effect, the effect is unlikely to be so great that the fishing mortality rate associated with MSY would be exceeded and it is not likely to result in an adverse impact on target stocks. Further, any such effect would be monitored through the existing fishery information systems and if found to be excessive the Council would be able take action to mitigate it. If the NWHI Reserve restrictions serve to cap the fleet-wide catch, the cap will presumably be set at a level no greater than MSY.

Given that the NWHI Reserve will reduce the available fishing areas, any fleet-wide catch-increasing effect would bring the possibility of a greater degree of localized fish depletion in the areas left open to fishing, regardless of any caps on total catch imposed by the NWHI Reserve.

None of the alternatives is likely to cause a significant change in catch composition, so the effects on non-target fish stocks (e.g., species that are typically discarded) would be of the same type and of roughly the same magnitude as any effects on target fish stocks, as described above.

6.1.4.3 Impacts on Essential Fish Habitat

None of the alternatives is expected to have adverse impacts on essential fish habitat (EFH) or habitat areas of particular concern (HAPC) for species managed under the Pelagics, Bottomfish and Seamount Groundfish, Precious Corals, or Crustaceans Western Pacific Fishery Management Plans. EFH and HAPC for these species groups have been defined as presented in Table B-3. The objective of the proposed action is to adjust the Mau Zone and Ho’omalu Zone

limited access programs such that participants have a greater degree of flexibility in the use of their permits, while continuing to ensure that permits are allocated in a fair and equitable manner. None of the alternatives is likely to adversely affect EFH or HAPC for any managed species as they are not likely to lead to substantial physical, chemical, or biological alterations to the habitat of these species or their prey. For the same reason, none of the alternatives is expected to cause substantial damage to the ocean or coastal habitats.

Table B-3. Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC) for species managed under the FMPs for the Pelagics, Bottomfish and Seamount Groundfish, Precious Corals, and Crustaceans Fisheries of the Western Pacific Region

SPECIES GROUP (FMP)	EFH (juveniles and adults)	EFH (eggs and larvae)	HAPC
Pelagics	water column down to 1,000 m	water column down to 200 m	water column down to 1,000 m that lies above seamounts and banks
Bottomfish	water column and bottom down to 400 m	water column down to 400 m	all escarpments and slopes between 40-280 m, and three known areas of juvenile *opakapaka* habitat (2 off Oahu and 1 off Molokai)
Seamount Groundfish	(adults only:) water column and bottom from 80 to 600 m, bounded by 29° - 35° N and 171° E - 179° W	(including juveniles:) epipelagic zone (0 to ~200m), bounded by 29° - 35° N and 171° E - 179° W	
Precious Corals	Keahole, Makapu'u, Kaena, Wespac, Brooks, and 180 Fathom gold/red coral beds, and Miloli'i, S. Kauai and Au'au Channel black coral beds	not applicable	Makapu'u, Wespac, and Brooks Bank beds, and the Au'au Channel
Crustaceans	bottom habitat from shoreline to a depth of 100 m	water column down to 150 m	all banks within the Northwestern Hawaiian Islands with summits less than 30 m

All areas are bounded by the shoreline and the outer boundary of the EEZ unless indicated otherwise.

6.1.4.4 Impacts on sea turtles

Given that this fishery has no interactions with sea turtles, and the alternatives considered here

are not expected to change historical fishing patterns or operations, it is not anticipated that any alternative considered here will lead to adverse impacts on sea turtles.

6.1.4.5 Impacts on marine mammals

Although fishery impacts with marine mammals are rare (see Section 6.1.3.4) they can be assumed to occur in rough proportion to the amount of fleet-wide fishing effort.

As described in Section 6.1.4.1, all the action alternatives could potentially result in greater levels of fleet-wide fishing effort relative to the no-action scenario, with an attendant greater potential for impacts on monk seals and other marine mammals. The likelihood of such an effect would be greater under Alternatives 4-6 than under Alternatives 2, 3, and 7. If the NWHI Reserve serves to severely limit the pool of eligible participants, any such effect caused by the ability to transfer permits under Alternatives 4-6 would be small or nil. However, relative to rates of fishing effort in recent years, Alternatives 2, 3, and 7 are most likely to result in a future decrease – or no change – in fleet-wide fishing effort. Although Alternatives 4-6 could lead to an increase in future levels of fishing effort, any such increase is, as described in Section 6.1.4.1, likely to be relatively small and could be mitigated by further Council action if found to be excessive. If the NWHI Reserve serves to cap fleet-wide catches (and effectively, associated fishing effort), any such increase would be constrained by that cap.

6.1.4.6 Impacts on seabirds

Given that this fishery has very few interactions with seabirds and the alternatives considered here are not expected to change historical fishing patterns or operations, it is not anticipated any alternative considered here will lead to adverse impacts on seabirds.

6.1.4.7 Impacts on biodiversity and ecosystem function

Although impacts of the fishery on biodiversity and ecosystem function are low, they can be assumed to occur in rough proportion to the amount of fleet-wide catch.

As described in Section 6.1.4.1, all the action alternatives could result in greater levels of fleet-wide catch relative to the no-action scenario, with an greater potential for impacts on biodiversity and ecosystem function. The likelihood of such an effect would be greater under Alternatives 4-6 than under Alternatives 2, 3, and 7. If the NWHI Reserve serves to severely limit the pool of eligible participants, any such effect caused by the ability to transfer permits under Alternatives 4-6 would be small or nil. However, relative to levels of catch in recent years, Alternatives 2, 3, and 7 are most likely to result in a future decrease – if any change at all – in fleet-wide catch levels. Although Alternatives 4-6 could lead to an increase in future levels of catch, any such increase is, as described in Section 6.1.4.1, likely to be relatively small and could be mitigated by further Council action if found to be excessive. If the NWHI Reserve serves to cap fleet-wide catches, any such increase would be constrained by that cap.

6.1.4.8 Impacts on public health and safety

Alternatives 4-6 would effectively reduce the amount of previous bottomfishing experience that is required of fishery participants. To the extent that the health and safety of fishery participants is a positive function of that experience, these alternatives could result in greater health and safety risks to the average fishery participant (particularly to new and inexperienced participants). If the NWHI Reserve serves to restrict the pool of eligible participants to those with substantial experience in the fishery, then the effect would be small or nil.

Alternatives 2, 3, and 7 would not modify the amount of previous bottomfishing experience that is required of fishery participants, so they are not likely to result in adverse impacts on the health or safety of fishery participants.

None of the alternatives is likely to result in adverse impacts on public health or safety outside the pool of fishery participants.

6.1.4.9 Impacts on markets and consumers

As described in Section 6.1.4.1, any of the action alternatives could result in greater levels of fleet-wide catch relative to the no-action scenario, with an attendant greater supply of fresh bottomfish products to local markets. The likelihood of such an effect would be greater under Alternatives 4-6 than under Alternatives 2, 3, and 7 (and relative to rates of fishing effort in recent years, Alternatives 2, 3, and 7 are likely to result in a decrease – if any change at all – in fleet-wide catch).

Alternatives 2, 3, and 7 could lead to lower levels of fleet-wide fishing effort relative to the no-action scenario, with a corresponding impact on fleet-wide catch and supply of fresh bottomfish products to local markets. There does not appear to have been a strong relationship between local bottomfish production and price in recent years, possibly in part because of the increasing contribution (about 40%) of imported bottomfish products to the local market (WPRFMC 2002b). It is therefore unlikely that an impact on supply – which is likely to be relatively small in any case – would result in a substantial impact on price. However, replacement of the supply of fresh Hawaii bottomfish with imported fish of lesser quality represents a significant loss of consumer surplus. If the NWHI Reserve serves to severely limit the pool of eligible participants, the possibility of a supply-increasing effect stemming from the ability to transfer permits under Alternatives 4-6 would be small or nil. If the NWHI Reserve serves to cap fleet-wide catches, any supply-increasing effect would be constrained by that cap.

6.1.4.10 Impacts on management costs

The removal of the permit renewal landing requirements in Alternatives 4, 6, and 7 is expected to result in slightly lower annual management costs because there would be slightly lower administrative costs needed to determine eligibility among applicants each year. Under Alternative 7, permits would be automatically renewed without application and without fee.

Because the application fee is set at a level equivalent to the estimated cost of processing the permit, the administrative cost savings from not having to fully process permits would be offset by the loss in application fee revenues, with essentially no net change. However, permits would still have to be prepared and delivered, so net administrative costs would actually be slightly greater under the preferred alternative than under the no-action alternative. On the other hand, application fees are currently charged only for Mau Zone permits, so the administrative "losses" from processing Ho'omalu Zone permits under the no-action alternative would be ameliorated under the preferred alternative (but a separate pending regulatory adjustment would charge application fees for Ho'omalu Zone permits). All of these impacts are relatively small: The estimated time spent by NMFS processing a new or renewed Mau or Ho'omalu permit is 1.5 person-hours (NMFS Pacific Islands Area Office). At 17 permits per year (the target level), the total estimated annual time spent processing permits under the no-action alternative would be 25.5 person-hours. The Mau Zone application fee is currently set at $63 per permit, so at 10 permits per year (the target level), revenues under the no-action alternative would be $630 and under the preferred alternative, $0.

The relaxation of the landing requirements in Alternative 2 and 5 would also lead to a reduction in the administrative costs of processing permits, but a smaller one than under Alternatives 4, 6, and 7. The increase in permit duration to three years under Alternative 3 would reduce the administrative costs of processing permits to about one third of the cost under the no-action alternative. The removal of the prohibitions on permit lease and charter under Alternatives 4 and 5 and the removal of the prohibition on permit sale under Alternative 6 would result in additional administrative costs needed to process the permit transfers, but the costs would be fully offset by the application fees for permit transfers.

None of the alternatives would result in an immediate substantial change in enforcement costs, but to the extent that enforcement (and administrative) costs are a positive function of fleet size, all of the action alternatives are likely to result in an increase in the future stream of management costs (relative to the no-action scenario) because they would tend to slow the rate of fleet attrition relative to the no-action scenario.

6.1.4.11 Cumulative impacts

The impacts described throughout Section 6.1.4 have been assessed in the context of all known existing factors and impacts on the environment. However, as emphasized throughout Section 6.1.4, the effects of the alternatives would depend on the effects of the NWHI Reserve restrictions and the outcome of the process to designate the NWHI Reserve as a National Marine Sanctuary, both of which are uncertain. As described in Section 6.1.4.1, each of the alternatives would, to varying degrees, mitigate the adverse impacts the NWHI Reserve is likely to have in terms of limiting opportunities to participate in the fishery, and Alternatives 2, 3, and 7 might serve to mitigate the Reserve's possible adverse impacts stemming from constraining the fleet to reduced fishing areas.

6.1.4.12 Areas of controversy

All of the alternatives will be controversial because of their dependence on the currently uncertain NWHI Reserve restrictions and the outcome of the multi-year process to designate the NWHI Reserve as a National Marine Sanctuary, and because – depending on the effects of the NWHI Reserve restrictions – they may result in a reduction in fishing opportunities for some prospective participants.

6.1.4.13 Reasons for choosing the preferred alternative

The Council has rejected Alternatives 1-3 because they provide too small of an increase in permit flexibility. The Council has rejected the alternatives that would allow some degree of permit transferability (Alternatives 4-6) because in terms of the allocation of fishing privileges they would represent a undesirable departure from the existing system, in which the opportunity to fish in the NWHI must be earned through experience. Another reason for rejecting Alternatives 4-6 is the transitional adverse impacts they would bring to prospective participants that have been earning their way into the fishery by making qualifying landings (these two points regarding Alternatives 4-6 would be moot if the NWHI Reserve serves to severely restrict the pool of eligible participants, but the Sanctuary, if established, might bring with it a new set of restrictions). Alternatives 4-6 would also bring a risk – albeit probably a small one – of an excessive increase in fleet-wide fishing effort and catch.

The Council has selected Alternative 7 as the preferred alternative because it would best serve – at least until clarification of the intent and effects of the NWHI Reserve restrictions, and, if established, the National Marine Sanctuary – the FMP objectives of maintaining opportunities for small-scale commercial fishing, maintaining consistent availability of high quality bottomfish to consumers, and balancing harvest capacity with harvestable fishery stocks. The preferred alternative could – depending on the effects of the NWHI Reserve – cause adverse effects in terms of the allocation of fishing privileges. The Council has determined that this risk is outweighed by the need to substantially enhance the flexibility associated with permits. Once the intent and effects of the NWHI Reserve and/or National Marine Sanctuary are clarified, the Council will be able to take the action needed to mitigate any such adverse effects.

6.2 Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) requires government agencies to assess the impact of their regulatory actions on small businesses and other small organizations via the preparation of Regulatory Flexibility Analyses. An Initial Regulatory Flexibility Analysis that examines the alternatives presented in this document is under preparation. A summary is provided here.

The small entities affected by the action include the fishermen in the NWHI bottomfish fishery. In 2001 there were 12 permit holders, 11 active vessels, and probably about twice that number of vessel crew. Industry-related businesses such as seafood dealers and restaurants might also be indirectly affected by the action.

All the action alternatives (2-7) would give permit holders more flexibility in the use of their permits, either by relaxing the landing requirements, extending the permit duration, or relaxing the restrictions on permit transferability. This increased flexibility would facilitate greater operational flexibility and economic efficiency, and the economic impact on individual fishermen would be positive. The magnitude of the impact would depend on the effects of the NWHI Reserve and would vary among alternatives. Alternative 7, the preferred alternative, would bring a moderate increase in flexibility relative to the other alternatives, and the effect would not depend on the effects of the NWHI Reserve. Alternative 7 would also remove the requirement for permit holders to apply for and pay an application fee for annual permit renewals (currently set at $63 for Mau Zone permits and $0 for Ho'omalu Zone permits, but under a pending regulatory adjustment the latter would be made comparable to the Mau Zone fee). This would reduce their compliance requirements and costs and bring positive (but relatively small) economic impacts to fishery participants.

The economic impacts on seafood dealers and restaurants and other industry-related businesses would depend on the relative magnitude of two countervailing effects. All the action alternatives would have a tendency to result in lower levels of individual fishing effort and catch than under the no-action scenario but they would also have a tendency to facilitate fishery participation, so the effect on fleet-wide catches and the supply of bottomfish products is difficult to predict. The likelihood of supply being greater than under the no-action scenario is greater under Alternatives 4-6 than under Alternatives 2, 3, and 7. If the NWHI Reserve restrictions serve to cap the fleet-wide catch, any tendency for fleet-wide catches to increase over time would be constrained within the bounds of the cap.

6.3 Executive Order 12866

In order to meet the requirements of Executive Order (EO) 12866, "Regulatory Planning and Review," the National Marine Fisheries Service requires that a Regulatory Impact Review (RIR) be prepared for all regulatory actions that are of public interest. This review provides an overview of the problem, policy objectives, and anticipated impacts of the proposed action, and ensures that management alternatives are systematically and comprehensively evaluated such that the public welfare can be enhanced in the most efficient and cost effective way.

In accordance with EO 12866, the following is set forth: (1) This rule is not likely to have an annual effect on the economy of more $100 million or to adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) This rule is not likely to create any serious inconsistencies or otherwise interfere with any action taken or planned by another agency; (3) This rule is not likely to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; (4) This rule is not likely to raise novel or policy issues arising out of legal mandates, or the principles set forth in the Executive Order and; (5) This rule is controversial.

Cost-earnings data indicate that vessels in the NWHI bottomfish fishery have, on average, failed to cover total costs in recent years, but that shortfall is presumably offset by revenues from other sources or other unmeasured benefits. Regardless of whether net returns in the fishery are negative or positive, all the alternatives, which will enhance the flexibility associated with permits, are expected to result, to varying degrees and dependent on the effects of the NWHI Reserve restrictions, in an improvement in average per-permit economic performance (relative to the no-action scenario). Alternative 7, the preferred alternative, would bring a moderate degree (relative to the other alternatives) of enhanced flexibility, and the effect would not depend on the NWHI Reserve restrictions. The impact on fleet-wide net returns will be a function of that effect and any effect on fleet size. All the action alternatives are expected to facilitate participation and result in greater fleet sizes than under the no-action scenario, subject to the effects of the NWHI Reserve restrictions. In the case that the NWHI Reserve restrictions serve to eventually force the fleet size to zero (possibly excepting two permits reserved for Native Hawaiians), annual net returns from the fishery will also reach zero. The preferred alternative is likely to result in a greater net present value of the fishery than in the no-action scenario, but it could result in a lower net present value if future annual net returns are negative and the positive impact of the action on annual net returns does not completely offset the effect of prolonging the future stream of negative net returns.

6.4 Coastal Zone Management Act (CZMA)

The CZMA requires a determination that a proposed management measure has no effect on the land, water uses, or natural resources of the coast zone, or is consistent to the maximum extent practicable with an affected state's approved coastal zone management program. A copy of this document will be submitted to the appropriate state government agency in Hawaii for review and concurrence with a determination made by the Council that the proposed measure is consistent, to the maximum extent practicable, with the state's coastal zone management program.

6.5 Endangered Species Act (ESA)

The Endangered Species Act of 1973 (ESA), as amended (Public Law 93-205; 87 Stat. 884) prohibits the taking of endangered species except under limited circumstances. In 1986, 1991, and 2002 formal Section 7 consultations were completed for the FMP. The results of the consultations are Biological Opinions as to whether the action – in this case, management of the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region according to the FMP – is likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species.

Existing regulations require NWHI bottomfish fishermen to report interactions with protected species. Amendment 4 to the FMP authorized the Regional Administrator to place observers on board bottomfish vessels if needed. Vessel operators are also required to attend a NMFS protected species workshop as a condition of receiving a permit.

Species listed as endangered or threatened under the ESA that have been observed in the area

where NWHI bottomfish vessels operate are as follows:

Marine Mammals	**Status**
Hawaiian monk seal (*Monachus schauinslandi*)	Endangered
Humpback whale (*Megaptera novaeangliae*)	Endangered
Sperm whale (*Physeter macrocephalus*)	Endangered
Right whale (*Eubalaena glacialis*)	Endangered
Blue whale (*Balaenoptera musculus*)	Endangered
Fin whale (*Balaenoptera physalus*)	Endangered
Sei whale (*Balaenoptera borealis*)	Endangered

Sea Turtles	**Status**
Green turtle (*Chelonia mydas*)	Threatened/Endangered
Hawksbill turtle (*Eretmochelys imbricata*)	Endangered
Leatherback turtle (*Dermochelys coriacea*)	Endangered
Loggerhead turtle (*Caretta caretta*)	Threatened
Olive Ridley turtle (*Lepidochelys olivacea*)	Threatened/Endangered

Seabirds	**Status**
Short-tailed albatross (*Phoebastria albatrus*)	Endangered

The only endangered or threatened species that has been documented to interact with the NWHI bottomfish fishery is the Hawaiian monk seal. The status of the Hawaiian monk seal population and its relationships with the NWHI bottomfish fishery is briefly described in Section 6.1.3.4. The 2002 Biological Opinion (NMFS 2002b) found that the bottomfish fishery – as managed under the current FMP – is not likely to jeopardize the continued existence of the Hawaiian monk seal or result in the destruction or adverse modification of its critical habitat.

Although the 2002 Biological Opinion anticipates take of Hawaiian monk seals in the bottomfish fishery, it does not provide an incidental take statement. Once a take statement is authorized under the MMPA, the Biological Opinion will be amended to include an incidental take statement (NMFS 2002b).

The 2002 Biological Opinion (NMFS 2002b) found that the bottomfish fishery – as managed under the current FMP – is not likely to adversely affect humpback, sperm, right, blue, fin, or sei whales, or hawksbill, leatherback, loggerhead, olive ridley, or green turtles (Sections 6.1.3.3 and 6.1.3.4).

In October 2003 NMFS reinstated its NWHI Bottomfish Observer program, as of June 29, 10 trips (out of a total of 52 trips) have carried federal observers with no interactions with sea turtles, monk seals, other marine mammals observed or other threatened or endangered species observed.

The short-tailed albatross is a relatively rare visitor to the NWHI and no sightings or interactions

with bottomfish vessels have been documented. In addition, the alternatives considered here are not expected to change historical fishing patterns or operations. Therefore, none of the alternatives are expected to have any adverse impacts on short-tailed albatrosses (Section 6.1.3.5).

Although fishery interactions with endangered species are rare, it can be that they occur in rough proportion to the amount of fishing effort. The proposed action could result in either greater or lower fleet-wide rates of fishing effort than in the no-action scenario, however because it would remove the annual permit renewal landing requirements, the resulting future level of overall fishing effort is likely to be even less than those of recent years, so the action is not likely to adversely impact any endangered or threatened species (Sections 6.1.4.4, 6.1.4.5, and 6.1.4.6).

It is anticipated that NFMS will conduct an informal consultation on this rule under Section 7 of the Endangered Species Act.

6.6 Marine Mammal Protection Act (MMPA)

With the exception of the Hawaii-based longline fleet, all fisheries in the waters around Hawaii, including the bottomfish fishery, are classified as Category III under Section 118 of the MMPA (62 FR 28657, 27 May 1997), meaning that the fisheries were determined by NMFS "to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals" (50 CFR 229.2). Vessel owners and crew that are engaged only in Category III fisheries may incidentally take marine mammals without registering or receiving an Authorization Certificate under the MMPA, but they are required to: 1) report all incidental mortality and injury of marine mammals to NMFS, 2) immediately return to the sea with minimum of further injury any incidentally taken marine mammal, 3) allow vessel observers if requested by NMFS, and 4) comply with guidelines and prohibitions under the MMPA when deterring marine mammals from gear, catch, and private property (50 CFR 229.5, 229.6, 229.7).

Any species listed as endangered or threatened under the ESA, such as the Hawaiian monk seal, is considered to be depleted under the MMPA, and any incidental take of that species must be authorized under Section 101(a)(5) of the MMPA, subject to a determination by the Secretary of Commerce that any incidental mortality or serious injury will have a negligible impact on the affected species or stock and that a recovery plan has been developed or is being developed under the ESA for the species or stock. Such incidental take for the Hawaiian monk seal has not yet been authorized.

Species of marine mammals that are protected under the MMPA but not listed as threatened or endangered and that occur in the areas where bottomfish fisheries operate are as follows:

Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)
Rough-toothed dolphin (*Steno bredanensis*)
Risso's dolphin *(Grampus griseus*)
Bottlenose dolphin (*Tursiops truncatus)*

Spotted dolphin (*Stenella attenuata*)
Spinner dolphin (*Stenella longirostris*)
Striped dolphin (*Stenella coeruleoalba*)
Melon-headed whale (*Peponocephala electra*)
Pygmy killer whale (*Feresa attenuata*)
False killer whale (*Pseudorca crassidens*)
Killer whale (*Orcinus orca*)
Pilot whale *(Globicephala melas*)
Blainsville's beaked whale *(Mesoplodon densirostris*)
Cuvier's beaked whale (*Ziphius cavirostris*)
Pygmy sperm whale (*Kogia breviceps*)
Dwarf sperm whale (*Kogia simus*)
Bryde's whale (*Balaenoptera edeni*)

Of the above, only the bottlenose dolphin has been documented interacting with the bottomfish fishery by taking fish from hooks, as recorded during the 1990-1993 NWHI vessel observer program (Nitta 1999). Additional information on the status of bottlenose dolphin in the affected area is available in the DEIS for the FMP (WPRFMC 2004). Several sightings of spinner dolphin were made during the 1990-1993 observer program but no interactions were observed (Nitta 1999) (Section 6.1.3.4). No interactions with marine mammals have been observed by federal observers since NMFS reinstated the NWHI Bottomfish Observer Program in October 2003.

Although fishery interactions with marine mammals are rare, it can be assumed that they would occur in rough proportion to the amount of fishing effort. The proposed action could result in a either greater or lower fleet-wide rates of fishing effort than in the no-action scenario, but because it would remove the current permit renewal landing requirements the resulting future overall fishing effort is likely to be less than those of recent years, so the action is not likely to adversely impact any marine mammals (Section 6.1.4.5).

6.7 Paperwork Reduction Act (PRA)

The purpose of the Paperwork Reduction Act of 1995 is to minimize the paperwork burden on the public. The Act requires federal agencies to ensure that information collected from the public is needed and is collected in an efficient manner (44 U.S.C. 3501 (1)).

This regulatory adjustment will remove the permit renewal landing requirements for Mau and Ho'omalu Zone limited access permits. Permits will be automatically renewed annually, without application and without fee. The removal of the requirement to apply for permit renewals on an annual basis will reduce to zero the paperwork burden on fishery participants. The estimated paperwork burden currently approved by the Office of Management and Budget is one person-hour per permit renewal application. At the target level of 17 permits, the total estimated

reduction in the public paperwork burden would therefore be 17 person-hours per year.

6.8 Executive Order 13089

Executive Order 13089 on Coral Reef Protection directs federal agencies to use their authority to protect coral reef ecosystems and, to the extent permitted by law, prohibits them from authorizing, funding or carrying out any action that will degrade coral reef ecosystems.

Risks of damage to coral reef habitat by bottomfishing gear are negligible because most of the bottomfish fishing in the NWHI occurs at depths greater than the portion of the photic zone where coral reefs and reef building organisms are normally found (0 - 100 m) (Section 6.1.3.2). There is a risk of bottomfish vessel groundings and pollutant spills from bottomfish vessels that could degrade coral reefs, but the risks are relatively small and the extent of any such degradation is likely to be relatively small. There is also a small risk of indirect adverse impacts via ecosystem links (e.g., through predator-prey relationships).

Although fishery impacts on coral reef habitat are negligible, it can be assumed that they occur in rough proportion to the amount of fishing effort. The proposed action could result in either greater or lower fleet-wide rates of fishing effort relative to the no-action scenario, but the resulting future rates are likely to be less than those of recent years, so the action is not likely to adversely impact coral reef ecosystems and it is consistent with the objectives and recommendations of Executive Order 13089.

6.9 Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

Executive Orders 13178 (December 4, 2000) and 13196 (January 18, 2001) provide for the establishment of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. The principal purpose of the Reserve is to provide for the long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Northwestern Hawaiian Islands. The seaward boundary of the Reserve is 50 nautical miles from the centers of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Island. The inland boundary of the Reserve around each of these land areas is the seaward boundary of Hawaii State waters and submerged lands and the seaward boundary of the Midway Atoll National Wildlife Refuge. The Reserve provisions call for certain restrictions over fishing activities, including bottomfishing. The restrictions include spatial closures, caps on catch, and restrictions on eligibility to participate in the fishery. The Executive Order calls for the Secretary of Commerce to initiate the process to designate the NWHI Reserve as a National Marine Sanctuary. The public scoping associated with that process began in April, 2002.

As indicated throughout this document, the effects of this action will depend on the effects of the Reserve restrictions, which remain uncertain. The proposed action is consistent with the purpose of the Reserve and, as far as can be determined, with the Reserve restrictions. It will also serve to mitigate some of the adverse impacts associated with establishment of the Reserve (Section

6.1.4.11).

6.10 Traditional Indigenous Fishing Practices

The Magnuson-Stevens Act requires the Council to take into account traditional fishing practices in preparing any FMP or amendment. This regulatory adjustment is not expected to affect traditional indigenous fishing practices.

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